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## MITCHELL TRANSPARENT ICE CO. v. TRIUMPH ELECTRIC CO.

Sept. 7, 1914.

[82 S. E. 730.]

**1. Appeal and Error (§ 852\*)—Review—Nature of Remedy—Seller's Lien—Enforcement—Statutory Proceeding.**—Code 1904, § 2462, subd. 2, provides that a seller's lien for purchase money may be enforced by a petition which shall state the contract, plaintiff's claim, and describe the property, and in answer defendant may state his grounds of defense, and his counterclaim or offset, to which plaintiff may reply. Held, that the remedy at law thereby provided did not supersede or affect the seller's right to sue in equity to enforce his lien, and hence the seller having elected to sue at law under the statute, the case could not be treated on writ of error as a suit in equity.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 3402; Dec. Dig. § 852.\* 1 Va.-W. Va. Enc. Dig. 358.]

**2. Evidence (§ 434\*)—Parol Evidence—Written Contract—Fraud—Misrepresentations.**—Misrepresentations or fraud in procuring a contract may be shown, though the contract itself has been reduced to writing, but the proof, in order to establish the fraud, must be convincing.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 2005-2020; Dec. Dig. § 434.\* 10 Va.-W. Va. Enc. Dig. 726.]

Error to Circuit Court, Tazewell County.

Action by the Triumph Electric Company against the Mitchell Transparent Ice Company. Judgment for plaintiff, and defendant brings error. Affirmed.

*Henry & Graham & Hawthorne*, of Tazewell, for plaintiff in error.

*Greever & Gillespie*, of Tazewell, for defendant in error.

## CHESAPEAKE &amp; O. RY. CO. v. TINSLEY.

Sept. 7, 1914.

[82 S. E. 732.]

**1. Pleading (§ 204\*)—Demurrer—Count Bad in Part.**—Faulty assignments in a count containing separable matters, some of which are good and some of which are bad, may be reached by demurrer, specifically stating the grounds of demurrer relied on.

[Ed. Note.—For other cases, see Pleading, Cent. Dig. §§ 486-490; Dec. Dig. § 204.\* 4 Va.-W. Va. Enc. Dig. 468.]

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.